The Central Law Journal.

ST. LOUIS, JULY 17, 1885.

CURRENT EVENTS.

THE APPOINTIVE SYSTEM.—The *Solicitor's Journal* says: "It is somewhat remarkable that, in the confident assumption that either the Master of the Rolls or Sir Hardinge Giffard will be Lord Chancellor, the greatest of living lawyers, Lord Blackburn, should be altogether left out of account." Perhaps this may be set down as one of the mishaps of the appointive system.

A PRIVY COUNSELLOR PRACTICING AT THE BAR.—The *Solicitor's Journal* says: "The honor conferred on Sir Henry James has led to some discussion as to whether there is any previous instance of a Privy Councillor practicing at the English Bar. There is one instance, and so far as we know, only one, in recent times. In 1856 Mr. Stuart Wortley, who had been sworn a Privy Councillor on his appointment as Judge Advocate-General in 1846, and had subsequently occupied the position of Recorder of London, was made Solicitor-General, and of course, during the few months of his tenure of that office, was in actual practice at the bar. The question whether there is any rule of etiquette to prevent a Privy Councillor from acting as an advocate was, we believe, submitted to a high authority in 1880, and it was considered that no such rule existed. The Attorney-General for Ireland and the Lord Advocate of Scotland are almost invariably Privy Councillors, and it is difficult to see why the leader of the English Bar should not always occupy the same position." In this country, where we are not so tender on questions of etiquette, cabinet ministers have been known to remain members of law firms. Mr. Evarts did, who was Secretary of State in the cabinet of Mr. Hayes; so did Mr. McCrary, who was Secretary of War in the same cabinet. Senators of the United States appear as counsel in the Supreme Court; and to retain a public official as a lawyer is one of the recognized forms of bribery, though it ought to be said that known instances of it are rare.

SETTLEMENT OF THE ADAMS-COLERIDGE LIBEL SUIT. The *Solicitor's Journal* says: In the Court of Appeal, No. 1, on Tuesday, the Attorney-General stated the terms of settlement of the actions Adams v. Coleridge and Adams v. Lord Coleridge in the following terms: "'Adams v. The Hon. B. Coleridge.' No judgment to be delivered, and action stayed. 'Adams v. Lord Coleridge.' Action to be stayed. In relation to the causes of action in both actions it should be left to (some person of eminence to be agreed upon) to determine whether compensation, and of what amount, should be paid to Mr. Adams. In addition to the above settlement Mr. B. Coleridge, while unreservedly withdrawing the charges made in his letter of December 11, 1883, states most positively that they were made on his part in perfect good faith on statements made to him, and Mr. Adams is happy frankly to accept such assurance. Lord Coleridge desires, and has long desired, to say that whatever construction may have been placed upon anything he has written or said, he thinks it due to Mr. Adams to withdraw any language which might be construed as casting imputations upon his character or motives. Lord Coleridge cannot regard it as being necessary to say that he has never intended to cast any reflection upon the conduct of his daughter. It has been agreed that Miss Coleridge shall be replaced in the same pecuniary position as she would have been if these misunderstandings had not arisen, Lord Coleridge being perfectly willing to make the suitable provision of £600 per annum by way of allowance to Miss Coleridge." We know nothing about the merits of this controversy on this side of the water. But while certain American newspapers have echoed the improbable stories about Lord Coleridge's unkind treatment of his daughter, just as they echo similar stories about any other man in high station, the American lawyers who looked into his kindly face and felt the warm grasp of his hand two years ago, will more readily believe that he has felt the pangs of King Lear for the ingratitude of one

who, of all living persons, should stand nearest to him.

A WELL DESERVED TRIBUTE.—We have received a memorial pamphlet, beautifully printed, containing a portrait of the Hon. John Erskine, Judge of the District Court of the United States for the District of Georgia, lately retired, bearing this inscription: "To those who have paid so graceful a compliment to Judge Erskine, this little volume is gratefully inscribed by his daughter and her husband, Williard P. and Ruby Erskine Ward. It contains the testimonials which were tendered to Judge Erskine on the occasion of his retiring from the bench, and also the proceedings on the occasion of the presentation of portraits of Judge Erskine to the United States Courts at Atlanta and Savannah. Judge Erskine took his seat at the immediate close of the late civil war. Georgia had but recently felt the tread of an army whose general acted on the principle that war cruelty; and human passion was as restless as the ocean working after a great storm. In the corruptions engendered by a period of war men had lost their moral moorings, and society had almost dissolved into anarchy. Ascending the bench in such a state of things, he held the office for nineteen years, steering clear of the quicksands in which other judges had been wrecked; holding the scales of justice evenly between men of all parties; administering the law firmly, and yet tempering its rigors with mercy; and in all things acting, like Lord Coke, as became a judge. We believe that he even escaped calumny—a thing which is too much for the most upright judge to hope for. But when calumny assailed another most learned and upright judge, he could not refrain from making public in these columns an expression of his confidence and sympathy, summed up in the following quotation:

"He that hath light within his own true breast
May sit i' the center and enjoy bright day."

And summed up the character of his traducer, as follows:

'But he that hides a dark soul and foul heart,
Benighted walks under the noon-day sun;
Himself is his own dungeon."[1]

[1] 5 C. L. J., 172, V.

So Judge Erskine may now sit in the center of the vast circle of 70,000 of his professional brethren, in the bright day which springs from the consciousness of duty well done and honor, and gratitute well earned.

THE TYPE WRITER.—While discussing the subject of court costs, as we did last week, it would be well to consider the effect which the introduction of the type writer ought to have upon the charges which clerks of courts ought to be allowed for copying. This instrument has come into general use among clerks of courts. It has had the effect of doubling the speed of ordinary writing in all cases, and in some cases of multiplying it by four. A good manipulator of the improved Remington machine will average 1200 words an hour, and we know of a case where a speed of 3,000 words an hour has been attained. Where several copies are required, they are made by the use of manifold paper, with sheets of carbon paper between; so that it is as easy to make two copies as one copy. In the face of this labor-saving improvement, the old charges for clerical copying are still kept up, and the clerks of many of the courts are reaping a rich harvest. For instance, a judicial opinion is rendered in an important case and the clerk knows that at least four copies will be required of him. The reporter must have a copy for which (in Missouri,) the State pays at the rate of 15 cents per hundred words; the lawyers on each side must have a copy, for which the clerk is entitled to charge them at the rate of 10 cents a hundred words. Another copy has to go to the court below, with the mandate of the court, for which the clerk is also entitled to charge at the rate of 10 cents per hundred words. Here is an aggregate of the four copies at 45 cents for every hundred words. A girl the at the type writer writes the four copies on four separate sheets of this thin paper, called "onion paper," with leaves of carbon paper between all except the upper sheet, and for doing the work she is paid perhaps 5 cents per hundred words. The clerk thus gets nine times as much as the doing of it actually costs him. But this is not the extent of the profit. The words are never counted, but are always estimated, and the estimate is always excessive,

and the excess is often as high as 50 per cent. Verily justice is blind, since the judges who see these abuses, but will not, and the lawyers who suffer them, dare not, take any steps to correct them. The spectacle of the money changers in the temple of Most High was as worthy as that of the sworn ministers of justice robbing the public in this way.

RE-ELECTION OF JUDGES.—*The Chicago Legal News* in a recent issue says: "Judges William K. McAllister, John G. Rogers, Thomas A. Moran, Murray F. Tuley and Lorin C. Collins, were on last Monday unanimously re-elected as Judges of the Circuit Court of Cook County, which is an indorsement of their official acts of which they may well be proud. The people are to be congratulated that the judicial election has been kept out of the mire of party politics, and that the judges who have served them in the past, with ability and unflinching integrity, have been again returned to their judicial positions. It is to be hoped when the terms of the judges of the Superior Court expire, they may be saved from the party lash, and treated with the same degree of fairness." The event which is thus chronicled is no less creditable to the two leading political parties of Chicago than it is to the public opinion of that city. It marks an era in the election of judges and makes a precedent which we hope will be followed in other large cities. The running of judges on party tickets in New York, Cincinnati, St. Louis and other cities has produced abuses so flagrant that the evil demands heroic treatment. The assessments which have been imposed by the party committees upon the party candidates for the judicial offices have been in many cases so great that the payment of them has literally amounted the buying of the office. When to this is added the raids which are made upon every candidate in large cities by dead beats of every species, it is no wonder that excellent men, who have been through the sweat once, so often refuse to become candidates for re-election, and that lawyers who are well-to-do in their profession so often refuse to be dragged through this species of filth into the seat of justice.

NOTES OF RECENT DECISIONS.

PARLIAMENTARY LAW [CONTEMPT]—POWER OF A PROVINCIAL LEGISLATIVE ASSEMBLY TO SUSPEND A MEMBER FOR OBSTRUCTING ITS DELIBERATIONS.—In *Taylor v. Barton*,[2] it was held by the Supreme Court of New South Wales, that the Legislative Assembly of that Province had neither the power to adopt from the Imperial Parliament nor to pass of its own authority any standing order giving itself the power to punish an obstructing member, or to remove him from the chamber for any period longer than the sitting during which the obstruction occurred.[3] Such member may be removed to enable the business of the Assembly to go on, and he may be kept excluded during that sitting which he has so interrupted, or he may be expelled; but he cannot be "suspended" at the pleasure of the House for misconduct of any kind. We have not seen the full report of the above decision, but if the above statement of it is correct, it must be said of it that it takes a curious distinction between the power to suspend and the power to expel. The former would seem to be included in the latter. Inherent power to punish contempts of their authority resides in the legislative bodies of sovereign States, such as the British House of Lords,[4] the British House of Commons,[5] the Senate[6] and House of Representatives[7] of the United States, and the legislative bodies of the several States,[8] subject, in some cases, to constitutional restrictions;[9] but it is not possessed by the legislative bodies of the British colonies and dependencies,[10] except when expressly granted by act of the Imperial Parliament;[11] nor by the legislative bodies of muni-

[2] Australian *Law Times* for Dec. 13, 1884.

[3] Doyle v. Falconer, L. R. 1 P. C. 328; 36 L. J. P. C. 34; 6 Moo. P. C. N. S. 203.

[4] Earl of Shaftsbury's case, 1 Mod. 144, 157, 158.

[5] Reg. v. Paty, 2 Salk. 503; s. c. 2 Ld. Raym. 1105; Murray's case, 1 Wils. 299; Crosby's case, 3 Wils. 188.

[6] *Ex parte* Nugent, 4 Clark (Pa. L. J.) 107.

[7] Anderson v. Dunn, 6 Wheat. (U. S.) 214; Stewart v. Blaine, 1 MacArth. (U. S.) 453.

[8] *Re* Falvey, 7 Wis. 630; Emery's case, 107 Mass. 172.

[9] Burnham v. Morrissey, 14 Gray (Mass.) 226; Emery's case, 107 Mass. 172.

[10] Keilley v. Carson, 4 Moore P. C. 63, (overruling Beaumont v. Barrett, 1 Moore P. C. 59); Fenton v. Hampton, 11 Moore P. C. 347, 393; Doyle v. Falconer, L. R. 1. P. C. 326; *Ex parte* Brown, 5 Best & S. 280; Hill v. Weldon, 3 Kerr (N. B.) 1.

[11] Speaker of the Legislative Assembly of Victoria v. Glass, L. R. 3. P. C. 560; Dill v. Murphy, 1 Moore P. C. N. S. 467.

cipal corporations, unless granted by the legislature of the state through a valid exercise of its power. Thus, it has been held in Massachusetts, that the common council of a city has no power, on general principles of law, to commit or punish for contempt, and that an act of the legislature which attempts to confer such a power upon such a body, is unconstitutional and void.[12]

PLEADINGS [INTERPRETATION]—RULE THAT DOUBTFUL EXPRESSIONS ARE TO BE TAKEN MOST STRONGLY AGAINST THE PLEADER STILL PREVAILS UNDER THE CODES.—In *Clark v. Dillon*,[13] the New York Court of Appeals say: "It was formerly the settled rule to construe doubtful pleadings most strongly against the pleader, but this rule has been so far modified by the code, as now to require them to be liberally construed, with a view to substantial justice between the parties. *This modification has, however, been held to extend only to matters of form, and not to apply to the fundamental requisites of a cause of action.*[14] A construction of doubtful or uncertain allegations in a pleading, which enables a party by their pleading to throw upon his adversary the hazard of correctly interpreting their meaning, is no more liable now than formerly; and when a pleading is susceptible of two meanings, that shall be taken which is most unfavorable to the pleader.[15] * * * While it is competent for a party to move to make the pleadings of his adversary more definite and certain, yet, inasmuch, as it is the primary duty of the party pleading, to present a clear and unequivocal statement of his allegations, the *onus* of having them made so cannot be cast upon his adversary by his own fault in failing to perform his duty." In Missouri, where pleading is regulated by a code like that of New York, it has also been laid down that the rule that the allegations of a pleading are to be taken most strongly against the pleader, is a rule which must hold under any system of pleading.[16] Another expression of the rule is that, while pleadings must he fairly interpreted, like any other writing, yet presumptions will not be indulged in to help out their defects.[17]

[12] Whitcomb's case, 120 Mass. 118; compare Briggs v. Mackellar, 2 Abb. (N. Y.) Pr. 30.

[13] 97 N. Y. 370.

[14] Spear v. Downing, 34 Bark. 522; Conger v. Hudson R. C.o, 12 N. Y. 190; Bunge v. Koop, 48 Id. 225.

[15] Bates r. Rosekrans, 23 How. Pr. 98.

[16] State *ex rel.* Albers v. Horner, 10 Mo. App. 307.

[17] State *ex rel.* v. Central etc. Asso., 14 Mo. App. 596.

EXECUTIONS AGAINST SEPARATE ESTATE OF MARRIED WOMAN.

1. Before the enabling statutes.
2. Under the enabling statute.
3. Equitable executions.
4. Order of payment of debts.
5. Restraining creditors.
6. Suits by and against married women.
7. Liability of separate estate for torts.

Before the Enabling Statutes.—A married woman possessed of a separate estate incurs no personal liability for her contracts and general engagements. The separate estate is liable, hence no personal judgment or decree can be made against a married woman. The execution must be against the estate.[1] Before the enabling statutes in this country the remedy was by bill in equity against the married woman and her trustee,[2] to subject the personalty and the rents and profits of the real estate.[3]

In the first adjudicated case [4] the court held that no personal decree against a married woman could be obtained, and in a subsequent case [5] Lord Thurlow held that the decree should be against the trustee to apply the personalty and the rents and profits of the realty. The reason for this was that only personal property was made separate estate, to avoid the husband's marital rights. The husband could not acquire any right to the real estate. Subsequent cases [6] held that the separate use extended to the fee the *corpus*

[1] Francis v. Wigzell, 1 Mad. 262.

[2] Field v. Sawle, 4 Russ. 112; Heatley v. Thomas, 15 Ves. 596; Kinge v. Delavall, 1 Vern. 326; Nail v. Punter, 4 Sim. 555.

[3] Hulme v. Tenant, 1 Bro. C. C. 20; Stanford v. Marshall, 2 Atk. 68; Nantes v. Carrock, 9 Ves 182; Bullpin v. Clark, 17 Ves. 365; Jones v. Harris, 9 Ves. 492; Stuart v. Kirkwall, 3 Mad. 387.

[4] 1 Mad., 262.

[5] Hulme v. Tenant, 1 Bro. C. C. 16. See Broughton v. James, 1 Coll. 26; Nantes v. Carrock, 9 Ves. 189.

[6] Taylor v. Meads, 34 L. J. ch. 203; Hull v. Waterhouse, 5 Giff. 64; Pride v. Bubb, 7 L. R. Ch. Ap. 64; Appleton v. Rowley, L. R. 8 Eq. 139; Adams v. Gamble, 12 Ir. Ch. 102; Atcheson v. Lemann, 33 L. T. 302.

—when it was so settled, and that in such cases the wife had the same power over the *corpus* as she had over the personal estate, and it was therefore held[7] that a married woman when not restrained from alienation, had a complete right of alienation by instrument *inter vivos* or by will,[8] and a *priori* the estate was liable to execution to the extent of her interest in it.[9] These two positions are not adverse to each other. The former admits that execution can reach the personalty, because that was placed to her separate use; and the latter hold that it can reach the realty, when that is placed to her separate use, because such separate estate is the cause and the foundation for the contract made or the indebtedness incurred.[10] As the enabling statutes in all the States places the real estate to the separate use, as was formerly sometimes done by deed of trust, there is no reason why the *corpus* cannot be subjected to an execution.

Under the Enabling Statutes.—Under these statutes it is settled that the personal property and the rents and profits of the real estate can be subjected to liquidate a married woman's debts and contracts, but whether her real estate—the *corpus*—can be taken to satisfy such claim has been disputed.[11]

In those States which hold that lands are chattels for the payment of debts and subject to execution,[12] and in those States which confer upon a married woman the power to hold property generally, and to contract as if *sui juris*, there can be no doubt but that the real estate can be reached by execution. But in those States where these provisions do not exist—where the statute merely invests her with the legal title instead of permitting the property to pass to her husband under the common law, the decisions are conflicting.[13] One class hold that the real estate is not, but the personalty is, liable for her debts and contracts, for the reason that the common law and equity rule remains unchanged, hence the personalty is liable, but the realty being in the same situation as was formerly her real estate, not held to her separate use, it is not liable. Acquiring by means of the statute property which at common law would belong to the husband, does not subject the realty. The wife owns the realty at common law and under the statute, and as she could not contract at law but only charge the personal estate in equity, the *corpus* was not subject to execution.[14] The other class hold the *corpus* liable on the ground that as a married woman can contract indebtedness based upon the separate estate, that estate must be liable to the extent of her interest in it. The latter is the correct position.[15]

In Phillips v. Graves,[16] the court held that the execution should be enforced through a receiver to subject the personal property, then the rents and profits of the real estate, and then the sale of the *corpus*, if necessary.

In Radford v. Carwile, the court held that the *corpus* cannot be touched by execution. The reasoning in this case was based on the ground that the separate estate, constituted, not the real estate, but the personal estate only. This was true at one period, but has been abandoned.[17] The correct doctrine is that the real estate, as well as the personalty, is subject to the payment of her debts and obligations. This is clearly shown by Dixon, C. J., in Todd v. Lee,[18] and Greene, Ch., in Johnson v. Cummins,[19] and the cases cited.[20]

Equitable Execution.—Under those statutes which do not confer the power of contract, the process against the separate estate in the lifetime of the wife is in the nature of an equitable execution, or an execution out of

[7] Taylor v. Meads, 34 L. J. Ch. 203, and cases cited.
[8] Ibid.
[9] Chubb v. Stretch, L. R. 9 Eq. 560.
[10] See Yale v. Dederer, 18 N. Y. 270; Miller v. Newton, 23 Cal. 554; Cox v. Wood, 20 Ind. 54; Whitesides v. Cannon, 23 Mo. 457; Tiernan v. Poor, 1 Gill. & J. 216.
[11] See the review of the cases on this question in Radford v. Carwile, 13 W. Va. 572.
[12] Phillips v. Graves, 20 Ohio St. 390.
[13] See Radford v. Carwile, Phillips v. Graves and Yale v. Dederer.
[14] Yale v. Dederer and Radford v. Carwile.
[15] Tiernan v. Peel, 1 Gill. & J. 217; Yale v. Dederer, 21 Barb. 290; Whitesides v. Cannon, 23 Mo. 457.
[16] 20 Ohio St., 390.
[17] Taylor v. Meads, 34 L. J. ch. 203; Troutbeck v Boughey, L. R. 2 Eq. 534; Allen v. Walker, L. R. 5 Ex. 187; Lechmere v. Brotheridge, 32 Beav. 353; Appleton v. Ramley, L. R. 8 Eq. 139; Moore v. Webster, L. R. 3 Eq. 267.
[18] 15 Wis., 365.
[19] 1 C. E. Greene, 97.
[20] Peake v. LaBaw, 6 C. E. Greene, 269; Armstrong v. Ross, 5 C. E. Greene, 109; Yale v. Dederer, 18 N. Y. 272; Davis v. Millet, 34 Me. 429; Ayre v. Warren, 47 Me. 217; Lee v. Lanahan, 59 Me. 478; Cookson v. Toole, 59 Ill. 515

equity, and it may in a proper case, like an execution at law, be defeated.[21]

Order of Payment.—Some cases have held that *all* the creditors of a married woman should be paid *pari passu*,[22] while others held that the debts should be paid in the order of their priority.[23] These rulings were based on two conflicting doctrines: One, that her debts are charges on the separate estate and equivalent to so many assignments, and should, therefore, be paid in the order of their date; the other, that her debts are not charges, but create a liability only, the remedy for which, if the *feme* were *sole* would be against the person, but as she is *covert* it is against the estate, and hence should be paid *pari passu*.[24] The former doctrine has been repudiated and the latter adopted.[25]

Restraining Creditors.—Under, as well as independent of the enabling statutes, a married woman will be protected in the use and enjoyment of her separate estate against her husband, or his creditors, and if necessary they, or either of them, may be restrained by injunction from interfering;[26] and it is well settled that creditors who have not obtained a judgment, cannot interfere with her separate property, nor obtain an injunction against her.[27]

Suits by and Against Married Women.—At common law a married woman could be a plaintiff or defendant in a suit, when joining or joined with her husband, and process served upon him alone was sufficient.[28] He appeared and answered for both, unless the court ordered otherwise.[29] In equity this was different, and when the litigation concerns the separate estate, a married woman sued separately as plaintiff by her next friend or without it, by leave of the court, or as the statute, if any, provided, and she answers separately as defendant.[30] She must be served with process,[31] even if the suit is at law, under the enabling statutes,[32] nor can the husband waive or acknowledge service for her.[33] She will be bound by submission in her bill or answer,[34] and by settlement of accounts.[35] She may be liable to attachment for want of an answer,[36] and for disobeying an order of the court,[37] or her separate estate could be ordered to be sequestrated.[38]

In the absence of express statutory provision, conferring upon a married woman the power to contract, or the power to sue and be sued, all suits to charge the separate estate for her debts and contracts, must be brought as in equity,[39] including all actions for or against a married women, and also for specific performance.[40] Unless the statute provides the method and manner in which the suit shall be brought, the complaint must be in equity.

In States where the statute by express provision or by necessary implication, confers the power to sue and be sued at law, the statutory provision must be followed.[41] In explanation of this the Illinois court, in Cookson v. Toole,

[21] Per Turner, J., in Johnson v. Gallagher, 3 Dels. F. & J. 520.

[22] Murray v. Barlee, 4 Sim. 82; Owens v. Dickenson, 1 C. & P. 48; Mathewman's Case, L. R. 3 Eq. 787.

[23] Shattack v. Shattack, L. R. 2 Eq. 182, and cases cited.

[24] Bank of Australia v. Lempriere, L. R. 4 P. C. 594.

[25] Kelly Cont., M. W. ch. 8.

[26] Green v. Green, 5 Hare, 400; Newland v. Paynter, 4 M. & C. 408; Mawhood v. Milbanks, 15 Beav. 36; Allen v. Walker, 5 L. R. Ex. 187; Fleet v. Perrins, 3 L. R. Q. B. 536; White v. Cohen, 1 Drew. 312.

[27] Robinson v. Pickering, 29 W. R. 385; Wiggins v. Armstrong, 2 Johns. Ch. 144; Uhl v. Dillon, 10 Md. 500; McGoldrick v. Slevin, 43 Ind. 522; Johnson v. Farnum, 56 Ga. 144; Mayer v. Wood, 56 Ga. 427.

[28] McColloch v. Boyce, 1 Bailey, 52; Foote v. Lathrop, 53 Barb. 183; King v. McCampbell, 6 Blackf. 435; English v. Roche, 6 Ind. 62; 1 Chit. Pl. 565.

[29] Collard v. Smith, 2 Beas. 43; Wolf v. Banning, 3 Minn. 202; Lathrop v. Heacock, 4 Lans. 1; Leavitte v. Cruger, 1 Paige, 421; Getzler v. Saroni, 18 Ill. 511.

[30] Jackson v. Hawarth, 1 Sim. & Stu. 161; Pigot v. Snell, 59 Ill. 106; Picard v. Hine, 5 L. R. Ch. Ap. 274.

[31] Copperthwaite v. Taite, 13 Ir. Eq. 68; Work v. Doyle, 3 Ind. 436; McCulloch v. Wilson, 9 Harris, 436.

[32] Pigott v. Snell, 59 Ill. 106; Lathrop v. Heacock, 4 Lans. 1.

[33] Treadwell v. Herndon, 41 Miss. 38; Hughes v. Mulvey, 1 Sandf. 92; Hess v. Cole, 3 Fab. 116; Moore v. Wade, 8 Kan. 380.

[34] *In re* Crump, 34 Beav. 570; Allan v. Papworth, 1 Ves. 163; Clerk v. Miller, 2 Atk. 379.

[35] Wilton v. Hill, 25 L. J. Ch. 156.

[36] Graham v. Fitch, 2 DeG. & S. 246; Taylor v. Taylor, 12 Beav. 271; Home v. Patrick, 30 Beav. 405.

[37] Ottway v. Wing, 12 Sm. 90.

[38] Keagh v. Cathcart, 11 Ir. Eq. 280.

[39] Johnson v. Cummins, 1 C. E. Greene, 105; Jones v. Crosthwaite, 17 Iowa, 403; Carpenter v. Mitchell, 50 Ill. 474; Willard v. Eastham, 15 Gray, 335; Payne v. Burnham, 62 N. Y. 74; Johnson v. Jones, 51 Miss. 864; Love v. Watkins, 40 Cal. 558; Vance v. Nagle, 7 Pa. St. 180.

[40] Hinckly v. Smith, 51 N. Y. 24; Baker v. Hathaway, 5 Allen, 105; Dankel v. Hunter, 61 Pa. St. 382; Pentz v. Simonson, 2 Beas. 235; Kingsley v. Gilman, 15 Minn. 59.

[41] Todd v. Lee, 15 Wis. 365; Cookson v. Toole, 59 Ill. 519; Bauman v. Street, 76 Ill. 529; Springer v. Berry, 47 Me. 336; Holloway v. Grace, 50 Ala. 42.

said: "When the estate is thus transformed by the statute from an equitable to a legal estate, all the rights incident to it must be legal rights, so far as the statute extends her disability at common law, and her husband's marital rights are taken away. When her right of property is invaded her redress is at law instead of equity. The capacity to contract within the scope of the statute is necessarily a legal capacity, and all contracts under it must be legal contracts cognizable by courts of law." Another court [42] has stated that "so far as regards all property upon which these statutes operate, the wife is invested with a legal capacity, and entitled to all appropriate remedies in her own name, for the preservation and protection of her estate, and also for the enforcement of such contracts as she is authorized to make for the management or sale thereof, or as incident to its ownership and the power of disposition." Under such statutes the joinder of the husband as plaintiff or defendant is not necessary or required,[43] unless some interest or right of his intervenes,[44] and in conformity with such statutes a personal judgment may be rendered against such married woman,[45] in which case it will bind after-acquired property,[46] and to obtain which it is not necessary that the pleading set forth either her coverture or her possession of separate estate.[47]

From the principle involved in both classes of statutes, it should follow that for an obligation for which the estate is liable, the creditor may, in a proper case, file his bill after the death of the married woman.[48]

Liability for Torts. — Upon the principle that a married woman can dispose of her separate estate, she will make it liable for a breach of trust.[49] If she as trustee, or fiduciary, wasted a trust estate, the ordinary right of retainer may be exercised against her separate estate.[50] And likewise her separate estate is liable to make good the loss occasioned by her wrongfully disposing of property in which she had no right of disposition.[51] And it has been held, but not settled, that the separate estate is liable for her antenuptial debts.[52]

JOHN F. KELLY.

Bellaire, Ohio.

[42] Springer v. Berry, 47 Me. 336.

[43] Furrow v. Chapin, 13 Kan. 112; Hayner v. Smith, 63 Ill. 432; Meriwether v. Smith, 44 Ga. 543; Alexander v. Goodwin, 54 N. H. 423; Darby v. Callaghan, 16 N. Y. 73; Stampoffski v. Hooper, 75 Ill. 242; Jay v. R. Co., 2 Daly, 401; Henry v. Gregory, 29 Mich. 69; Vankirk v. Skillman, 5 Vroom. 113.

[44] Jaycox v. Wing, 66 Ill. 184; Feron v. Rudolphsen, 106 Mass. 474; King v. Little, 78 N. C. 138: Tuttle v. Hoag, 46 Mo. 41.

[45] Bank v. Garlinghause, 53 Barb. 620; Richmond v. Tibbles, 26 Iowa, 476; Stillwell v. Adams, 29 Ark. 351; DeVries v. Conklin, 22 Mich. 260.

[46] Smith v. Dunning, 61 N. Y. 251; Van Metre v. Wolfe, 27 Iowa, 345.

[47] Smith v. Dunning, *supra*; Musgrave v. Musgrave, 54 Ill. 186; Ainsworth v. Backus, 5 Hun, 414.

[48] Owens v. Dickenson, 1 C. & P. 48; Gregory v. Lockyer, 6 Mad. 90; Norton v. Turvill, 5 P. Wms. 390.

[49] Crosby v. Church, 3 Beav. 485; Hanchett v. Briscoe, 22 Beav. 496; Davies v. Hodgson, 25 Beav. 186.

[50] Pemberton v. McGill, 1 Drew. & Sm. 266.

[51] Clive v. Carew, 1 J. & H. 199; Jackson v. Hobhouse, 2 Mer. 488; Mara v. Manning, 2 J. & L. 34; Bestall v. Bumbury, 13 Ir. Ch. 318.

[52] Chubb v. Stretch, L. R. 9 Eq. 555; Sanger v. Sanger, L. R. 11 Eq. 470.

SOLE TRADERS.

By the custom of London, which is the basis of the law in various States, a wife could be a sole trader on her own account, and, like her husband, could be declared a bankrupt or subjected to arrest and imprisonment for debt.[1] She was permitted with his assent not only to carry on a trade, separate from him, but to assume a personal responsibility on her contracts, and indeed to acquire all the rights of a *feme sole* in respect thereto. It was required, however, that her husband should be made a nominal party in all suits brought by and against her, though the judgment did not affect him.[2] The infrequent controversies arising out of such separate trading of the wife were determined in equity tribunals,[3] though it seems to have been

[1] Beard v. Webb, 2 B. & P. 97; and see 2 Roper Husb. & Wife, 124; Sch. Husb. & Wife, § 300. This custom is practically adopted in South Carolina (see Wilthaus v. Ludicus, 5 Rich. 326; Newbiggin v. Pillows, 2 Bay, 162; McDaniel v. Cornwall, 1 Hill, (S. C.) 428; Dial v. Neuffer, 3 Rich. 78); in Maine (Colbey v. Lamson, 39 Me. 119; Oxward v. Swanton, *Ibid* 125); and in Pennsylvania, (Jacobs v. Featherstone, 6 Watts & Serg. 346; Burke v. Winkle, 2 Serg. & R. 189).

[2] Bacon's Abr. Baron & Feme (M.); Beard v. Webb, just cited; Candell v. Shaw, 4 T. R. 361; Chitty Contr. (Ed. 1860) 197; Story on Sales (4th Ed.) § 49.

[3] See the recent cases of Talbot v. Marshfield, L. R. 3 Ch. 622; *Re* Peacock's Trusts, L. R. 10 Ch. D. 490; Ashworth v. Outram, L. R. 5 Ch. 923.

doubted by the chancery courts whether tradesmen furnishing supplies had any demands upon the wife's separate estate, even where she lived apart from her husband and carried on a trade.[4] But more extended rights and privileges in regard to the wife's separate trading have been conferred by the Married Women's Acts in England, of which the latest, that of 1883, is most sweeping in its removal of disabilities, and by analogous and comprehensive statutes in this county. The British enactment, in its most recent as well as in its earlier form, declares that wages and earnings of a married woman shall be her separate property; and the rulings on this point present many elements of interest. Thus, in a recent case the wife of a butcher who was incapacitated by delirium tremens, carried on her husband's business upon her separate resources. The husband, while at home, offered no objection to this course, though neither directly assenting nor abandoning his rights. It was held that she could buy meat upon her own credit free from liability for her husband's debts.[5] So where a single woman started a fruit preserving business and continued, after her marriage, to carry it on in her maiden name, with the consent and without the interference of her husband, and by her own capital and efforts, finally established it on a large wholesale basis, it was held, upon the death of her husband, that the widow should be protected against his administrator.[6] Under statutory provisions in the United States, the wife's power to trade on her own account has been enlarged and more fully established, so as to secure the profits of her business to her sole and separate use. Such statutes are to be found in New York, Maine, New Hampshire, Massachusetts, Connecticut, Kansas, New Jersey, Iowa, California, Wisconsin, Illinois, Arkansas, Mississippi and other States.[7] "Free dealer" and "sole trader" are words used in this connection;[8] and private acts are sometimes passed to authorize such trading;[9] while some of the sole traders' acts are inapplicable to the case of a husbands' insolvency while he remains at home.[10] The effect of these enactments is to enable the wife to use her separate property in business, and even, in some States, to enter into a general partnership for trade.[11] But the mere fact that a married woman, with the knowledge and consent of her husband, enters into a co-partnership, does not make the husband liable for debts of the firm contracted during her membership.[12]

In general what the wife acquires under these statutes is declared to be exempt from liability for the husbands' debts, and not subject to his control and interference.[13] The wife, under such statutes is found engaged, on her separate account, as milliner and dressmaker,[14] farmer,[15] boarding-house keeper,[16] army sutler,[17] operator of a mill,[18] saloon-keeper,[19] tavern-keeper,[20] or in whatever other business she may choose to embark with her own capital; or, in some States, with a prescribed amount derived from the separate property of the husband or that which they hold in common;[21] and even though the trade be unsuitable to her sex, fraud upon the hus-

[4] See Johnson v. Gallagher, 3 DeG. F. & G. 494; Sch. Husb. & Wife, 301.

[5] Lovell v. Newton, L. R. 4 C. P. D. 7.

[6] Ashworth v. Outram, L. R. 5 Ch. 923. Where one of two single women bought out the stock, good-will and business from the other who married, she was held entitled to carry on such business under the old firm style in London, and could not be restrained therefrom by the married woman and her husband, who had commenced a new business in Paris. *Re* Peacock's Trusts, L. R. 10 Ch. D. 490; Sch. Husb. & Wife, § 301, whence foregoing statements derived on last point; compare Morgan v. Perhannus, 36 Ohio St. 517.

[7] Sch. Husb. & Wife, § 309. On the other hand the system of separate trading is repudiated in North Carolina. McKinnon v. McDonald, 4 Jones Eq. 1.

[8] Newbrick v. Dugan, 61 Ala. 251.

[9] Halliday v. Jones, 57 Ala. 525.

[10] King v. Thompson, 87 Pa. St. 365; Moran v. Moran, 12 Bush, 301; Sch. Husb. & Wife, § 309.

[11] Sch. Husb. & Wife, § 309.

[12] Burgan v. Cahoon, Sup. Ct. Pa.. Pittsb. Law J., Feb. 15, 1882. Noted 14 Cent. L. J. 259. It is not error to allow an amendment striking out the name of the wife who has been originally sued as a co-partner with her husband and others. *Ibid.*

[13] Sch. Husb. & Wife, § 309, whence succeeding illustrations mainly derived.

[14] Jassoy v. Delius, 65 Ill. 469; Tuttle v. Hoag, 46 Mo. 38.

[15] Kanskop v. Shontz, 51 Wis. 204; Snow v. Sheldon, 126 Mass. 332.

[16] Harnden v. Gould, 126 Mass. 411; Davis v. Rodier, 125 Mass. 421.

[17] Swasey v. Antram, 24 Ohio St. 87.

[18] Cooper v. Ham, 49 Ind. 393.

[19] Nispel v. Laparle, 74 Ill. 306.

[20] Silvens v. Porter, 74 Pa. St. 448.

[21] See Thomas v. Desmond, 63 Cal. 426. But property derived from the husband's separate estate remains that of the husband, and subject to his debts, unless there has been mutual consent or a legal act of transfer. *Ibid.*

band's creditors will not be conclusively presumed.[22]

In all these and like instances it has been held that a married woman, with the consent of her husband, (or under statutory authority) might carry on business on her own account, and be protected in the result thereof against him and his creditors to the same extent as if she were unmarried.[23]

To the illustrations cited may be added the cases where the wife was to give her personal labor in the cultivation of a cotton crop;[24] and where she has been protected in the proceeds of her labor in picking berries, boarding children, selling milk, butter, eggs, etc.[25] It has been further judicially maintained that if the husband can consent to her giving her time to the management of a millinery or dress making establishment, away from her home, and if this makes the business her own, there is no conclusive reason apparent why she may not consent to her making her services in the household available in the accumulation of independent means in her own behalf, and in a proper case recover for the care of her husbands' father, who in his extreme old age was blind and imbecile.[26]

Under these statutes relating to the separate business of married women as sole traders, the wife who avail herself of them may make contracts of sale, and sue for goods sold and delivered to her customers;[27] may purchase goods, fixtures, and stock, and give binding obligations therefor;[28] may draw valid checks on her separate bank account devoted to the business;[29] may be required to refund loans of capital made to commence the business;[30] and may hold the merchandise and appurtenant property purchased by her, as her sole and separate property,[31] as against her husband and his creditor.[32] But before becoming entitled to these privileges she must first comply with the preliminary statutory requirements, such as special authority,[33] registry of intention,[34] or publication of notice.[35] Yet, subject to restrictions against fraudulent designs thereby covered, the wife may generally employ the husband as her managing agent; and even where this is not permitted there are nice distinctions unfavorable to the construction that he acts as her agent.[36]

It is still stated to be the general rule, however, that a wife may not, as against the world, become her husbands' partner or enter into like relations with third persons.[37]

[22] Guthman v. Scannell, 7 Cal. 455.

[23] Tillman v. Shackleford, 16 Mich. 447 (approved in West v. Laraway, 25 Mich. 19) where the business for which the wife was preparing was that of keeping boarders.

[24] Merriwether v. Smith, 44 Ga. 541.

[25] Peterson v. Mulford, 36 N. J. L. 241.

[26] Mason v Dunbar, 43 Mich. 307. It was said that the husband relinquishes his right to his wife's services in the one case no more than in the other, and that perhaps in the latter case the ordinary course of marital relations is least disturbed. *Ibid.*

[27] Porter v. Gamba, 43 Cal. 105; Netterville v. Barber, 52 Miss. 168; Trieber v. Stover, 30 Ark. 727.

[28] Nispel v. Laparle, 74 Ill. 306; Kouskop v. Shontz, 51 Wis. 204; Dayton v. Walsh, 47 Wis. 113: Wheaton v. Phillips, 1 Beasl. (N. J.) 221; Guthman v. Scannel, 7 Cal. 455; Camden v. Mullen, 29 Cal. 564; Reading v. Mullen, 31 Cal. 104.

[29] Nash v. Mitchell, 15 N. Y. 471.

[30] Grecking v. Rolland, 53 N. Y. 442.

[31] Tallman v. Jones, 13 Kans. 438; Meyers v. Rahte, 46 Wis. 655; Sammis v. McLaughlin, 35 N. Y. 467; Silvens v. Porter, 74 Pa. St. 448; Dayton v. Walsh, 47 Wis. 113.

[32] Sch. Husb. & Wife, § 310.

[33] Uhrig v. Horstman, 8 Bush, 172. Compare Wells Sep. Prop., §§ 134, 135.

[34] See Power v. Cobb, 104 Mass. 589; Bancroft v. Curtis, 108 Id. 47; Snow v. Sheldon, 126 Id. 132; Harnden v. Gould, Id. 411; Hill v. Wright, 129 Id. 296; and compare Wheeler v. Raymond, 130 Id. 247.

[35] Adams v. Knowlton, 29 Cal. 289.

[36] See Sch. Husb. & Wife, §§ 312, 313, and cases collected; Hassfeldt v. Dill, 10 N. W. Rep. 781; Wells Sep. Prop. §§ 160-178.

[37] See Sch. Husb. & Wife, §§ 315, 317; and see Wells Sep. Prop. §§ 152-159; Burgess v. Cahoon, noted 14 Cent. L. J. 259.

RETAKING PERSONAL PROPERTY SOLD CONDITIONALLY.

VAN WREN v. FLYNN.

Supreme Court of Louisiana, November 20, 1885.

TRESPASS. — [*Exemplary Damages.*] — *Retaking Property Sold on Condition.*—Where personal property is sold on condition that the purchase may be paid when due, and that the vendor may retake it upon non-payment, if the vendor enter the vendee's house in his absence and without notice, and retake the property, he will be guilty of a trespass, and liable to exemplary damages.

Appeal from the Sixth District Court for the Parish of Orleans.

Mr. Justice FENNER delivered the opinion and decree of the court:

Plaintiff bought from defendant, a furniture

dealer, a set of furniture, and paid for it. Subsequently, he bought from defendant another set of furniture, under an arrangement by which he returned a part of the first set, valued at $37.50, which defendant agreed to take back and credit on the price of the second set, and, for the balance of said price, he furnished his promissory notes, payable at thirty, sixty and ninety days.

Conflicting testimony is presented touching the existence and nature of a verbal agreement made between the parties at the time of the contract. We eliminate the contradictory statements of plaintiff and defendant, and accept that of the only other witness present at the time, who says that "Wren agreed with Flynn that in case he, Wren, did not pay his notes when they became due, Flynn could retake the furniture again."

Shortly before the maturity of the first note, on account of the illness of his wife, plaintiff, under medical advice, took her to Tangipahoa Parish, on the Jackson Railroad. On leaving, he sent a messenger to defendant, informing him of the cause of his departure, and stating that, upon his return, he would settle his bill; to which the defendant made no objection. Owing to continued ill-health of his wife and other sickness in his family, his absence was prolonged until nearly a month after the maturity of the last note. In the meantime, the notes had all matured, and defendant had several times sent his collector to plaintiff's house without finding him; but it does not appear that he made any other effort to communicate with him or to notify him of his intention to re-take the furniture, if not paid.

On the 27th of September, defendant went to plaintiff's house with a wagon and several men; entered the same, which was then occupied by plaintiff's mother, sister, and sister-in-law; informed these ladies that he had come to take the furniture, and disregarding their statement that Wren's return was expected and their request that he should wait until his return, he caused the contents of the furniture to be taken out, and removed and carried away the same.

That same night defendant returned with his invalid wife and children, and found their sleeping apartments denuded of furniture, so that they were compelled, in order to find accommodation, to send off some members of his family to other quarters. It is in evidence that plaintiff had provided himself with means to pay for the furniture and had returned with that purpose, according to the assurance which he had conveyed to defendant when he left the city, and to which the latter had not objected.

No one appreciating the jealous care with which our law guards the sacredness of every man's house and his lawful possession of property against invasion or disturbance, otherwise than by proceedings taken under the sanction and through the agency of the public justice, can question that, unless removed from its general principles by the effect of the agreement set up in defense, the acts which we have detailed constituted a gross outrage upon the rights and feelings of plaintiff, as a citizen, and a man, for which courts of justice must either grant redress or sanction the personal exaction of satisfaction by violence. Thayer v. Littlejohn, 1 Rob. 140.

The agreement established in this record cannot shield the conduct of defendant. It does not purport, in terms, to confer upon the defendant the right to enter the house of plaintiff, in his absence, without notice, and to carry off its contents. An agreement conferring such extraordinary power would need be so clearly worded and proven as to leave nothing to implication.

The grant of the simple right to retake his furniture, on non-payment of the price, cannot be construed to embrace such power. It conferred at most, a legal right upon defendant, which, like other rights, could be enforced only with the consent of plaintiff or by legal process; and we doubt, under the evidence here, whether any court would have awarded possession to Flynn, without requiring antecedent tender or payment of that part of the price which had been paid.

This case is entirely different from that of Jenks v. Home Sewing Machine Company, recently decided, where we rejected the claim of plaintiff, because, having consented to the retaking by plaintiff, she was present when he exercised the right and made no opposition.

We are not disposed to interfere with the allowance by the jury of $750,00 as damages. The discretion of juries in such matters is not to be interfered with, unless manifestly abused. The argument that the slight value of the furniture involved justifies a reduction of damages has no weight.

The unlawful invasion of the pauper's hovel and abstraction of his scanty possessions, is an injury identical, in character and magnitude with the entry of a palace and the despoiling it of its gorgeous apparel.

NOTE.—Public peace is of more importance than the gaining of possession of a chattel, even by the rightful owner. Bobb v. Bosworth, 12 Am. Dec. 274. A person may employ reasonable force in order to preserve his possession, even against the real owner, or one having the superior right to possession. Cooley Torts, 167; Abt v. Burgheim, 80 Ills. 92; Ayres v. Birtch, 35 Mich. 501; McCarty v. Freemont, 23 Cal. 196; State v. Stockton, 61 Mo. 382. Therefore where forcible resistance authorized, a forcible seizure will not be justified. Thornton v. Cochran, 51 Ala. 415.

A license to enter and remove property in the possession of another is a license coupled with an interest, and is assignable and irrevocable; and may be inferred from the duty to recognize the contract rights of the party claiming the license. Sterling v. Warden, 51 N. H. 217; McNeal v. Emerson, 15 Gray, 384; Patrick v. Colerick, 3 M. & W. 483; Mussey v. Scott, 32 Vt. 84. To an action of trespass by a mortgagor of a chattel for entering the mortgagee's premises and carrying away the mortgaged chattels, it is a good defense that the mortgage had become forfeited. Jones Chat. Mort., 434, citing Nichols v. Webster, 1 Chand. (Wis.) 203;

McNeal v. Emerson, 15 Gray (Mass.), 384. See also Street v. Sinclair, 16 Cent. L. J. 53; s. c., 71 Ala. 114. This rule applies with greater force to cases where the mortgage contains a power of sale vesting in the mortgagee an irrevocable license to enter and take possession of the mortgaged property upon default. Jones Chat. Mort. 434, approved in Street v. Sinclair, *supra*. But the law will not allow him to commit, or to threaten, a breach of the peace, and then to justify his conduct by a trial of the right of property. Jones Chat. Mort., § 705. Even though a person may have an irrevocable license to enter and remove the property it will not confer upon him authority to proceed otherwise than peaceably. Thornton v. Cochrane, 51 Ala. 415; McClure v. Hill, 36 Ark. 268. For while the license will relieve him from liability if the entry is made without opposition or resistance, yet, if resisted, he has no right to enforce his claims by a breach of the peace. Churchill v. Hulbert, 110 Mass. 43; Huppert v. Morrison, 27 Wis. 365; s. c., 3 Black's Com. 4; Bobb v. Bosworth, 12 Am. Dec. 273; Thornton v. Cochrane, 51 Ala. 415; Thayer v. Littlejohn, 1 Rob. (La.) 140; 36 Ark. 273. But in Sterling v. Warden, 51 N. H. 217, it was held that a licensee might use force sufficient to overcome resistance. The court in Street v. Sinclair, distinguished that case from Thornton v. Cochran, where the wrong-doer came with a deputy sheriff who professed to be acting officially, and the court held that acquiescence, under such circumstances, was by constructive force. The measure of damages where the unlawful taking is not accompanied by any acts of wantonness, malice or gross negligence, is the value of plaintiff's interest in the property. Street v. Sinclair, *supra*; McClure v. Hill, 36 Ark. 273. But where the defendant has a special property in the chattel the courts, in order to avoid circuity of action, will permit that interest to be deducted; and when the right is that of mortgagee. and the amount of the debt exceeds the value of the property, the recovery will be only nominal. McClure v. Hill, 36 Ark. 273; Jones Chat. Mort., 437; Waterman Tres., § 623; Bird v. Womack, 69 Ala. 390; Blodgett v. Blodgett, 48 Vt. 32. B.

LIABILITY OF RAILWAY COMPANY TO EMPLOYEE FOR DEFECTIVE APPLIANCES.

ATCHISON, TOPEKA & SANTA FE RAILROAD COMPANY v. WAGNER.

Supreme Court of Kansas, June 4, 1885.

1. NEGLIGENCE.—[*Master and Servant*]—*What risks Assumed by Employee.*—An employee of a railroad company by virtue of his employment assumes all the ordinary and usual risks and hazards incident to his employment.

2. ——. ——. *Master not an Insurer of Machinery, etc.*—As between a railroad company and its employees, the railroad company is not an insurer of the perfection of any of its machinery, appliances or instrumentalities for the operation of its railroad.

2. ——. ——. *But Bound only to Exercise Reasonable Care.*—As between a railroad company and its employees, the railroad company is required to exercise reasonable and ordinary care and diligence, and only such, in furnishing to its employees reasonably safe machinery and instrumentalities for the operation of its railroad.

4. ——. ——. [*Evidence*]—*Presumed to Have Done so till Contrary Appear.*—It will be presumed, in the absence of anything to the contrary, that the railroad company performs its duty in such cases, and the burden of proving otherwise will rest upon the party asserting that the railroad company has not performed its duty.

5. ——. ——. ——. *What Servant Must Prove to Recover.*—And where an employee seeks to recover damages for injuries resulting from insufficiency of any of the machinery or instrumentalities furnished by the railroad company, it will not only devolve upon such employee to prove such insufficiency, but it will also devolve upon him to show either that the railroad company had notice of the defects, imperfections or insufficiencies complained of, or that by the exercise of reasonable and ordinary care and diligence it might have obtained such notice.

6. ——. ——. ——. *Proof of a Single Defective Operation not Sufficient.*—And proof of a single defective or imperfect operation of any of such machinery or instrumentalities resulting in injury will not of itself be sufficient evidence, nor any evidence, that the company had previous knowledge or notice of any supposed or alleged defect, imperfection or insufficiency in such machinery or instrumentalities.

7. ——. ——. *Grounds on which Master's Negligence Predicated.*—As between a railroad company and its employees, the railroad company is not necessarily negligent in the use of defective machinery, not obviously defective, but it is negligent in such cases only where it has notice of the defects, or where it has failed to exercise reasonable and ordinary diligence in discovering them and in remedying them.

8. NEW TRIAL—[*Verdict*]—*New Trial Granted where Verdict not Sustained by Evidence.*—Whenever the verdict of a jury, or any necessary and material fact involved in the verdict, is not sustained by the evidence, or by any sufficient evidence, the Supreme Court will set it aside and grant a new trial, although the verdict may have been approved by the trial court.

Messrs. A. A. Hurd, John Reed, W. C. Campbell and *Robert Dunlap*, for the plaintiff in error; *Messrs. Whiteside* and *Hutchinson*, for the defendant in error.

VALENTINE, J., delivered the opinion of the court:

This was an action brought by Robert Wagner against the Atchison, Topeka & Santa Fe Railroad Company for damages for personal injuries alleged to have resulted from the negligence of the defendant. The case was tried before the court and a jury, and judgment was rendered in favor of the plaintiff, and against the defendant for $2,000 and costs of suit, and from this judgment the defendant by petition in error appeals to this court.

It appears from the record brought to this court that on December 23, 1881, and prior thereto, Wagner was in the employment of the railroad company, as a yard switchman at Nickerson, Kansas. His duties as switchman required him to couple and uncouple cars, make up trains, etc. Nickerson being the end of a division of the defendant's railroad, it was customary at that place to take off a car or coach from the west-

ern bound passenger train, which arrived at that place each evening, and to put it on the eastern bound passenger train the next morning. A switch-engine was used for this purpose, and among the duties performed by Wagner, were to couple and uncouple the passenger coach to and from this engine. The passenger coaches were equipped with a kind of draw-bars, usually known as "The Miller Coupling," an invention by which coaches are coupled to each other automatically, without the use of links or pins. Links and pins, however, may be used in coupling rolling stock equipped with this kind of coupling, and are so used whenever a coach equipped with this kind of coupling is coupled to another coach or car, or engine not so equipped. The switch engine was equipped with an oval-faced draw-head, with two or three slots or shelves into which a link might be placed for coupling. One witness testified that this contrivance for coupling was called a "Hinckley switch engine draw-head." In coupling or uncoupling coaches equipped with the Miller coupling to an engine equipped as this engine was, it was necessary to use a link and pins. On the morning of December 23, 1881, Wagner was ordered by J. W. Reed, the yard-master, to get on the switch engine, which had already been coupled to the passenger coach, and was standing on the side track, and to place the passenger coach in the eastern-bound passenger train. Wagner got on the step or platform of the engine and between the engine and the coach, for the purpose of obeying this order. The engine and coach were then moved by the engineer in obedience to a signal from Wagner, and when they arrived at the proper place, Wagner endeavored to uncouple the engine from the passenger coach, and in doing so he attempted first to pull the pin from the draw-head of the engine, but finding that the head of the pin was broken and the pin difficult of removal, he then reached over to the draw-bar of the passenger coach and pulled that pin. The engine at the time was pushing against the coach, and the draw-bar of the coach slipped by the draw-head of the engine, and catching the plaintiff's leg, broke it about two or three inches above the knee. This incapacitated him for work for a long time, and he endured pain and incurred expense, but his leg finally got to be nearly as well and sound as before the accident. No negligence is imputed to the yard-master or to the engineer, and it is not claimed that the engine or the passenger coach was in manner defective or out of order, except the defects in the coupling-pins, of which the plaintiff had full and complete knowledge, and the spring or appurtenances connected with the draw-bar of the passenger coach, of which the plaintiff did not have any notice or knowledge. Indeed, no person is shown to have had any notice or knowledge of any defect in such draw-bar, or in anything connected therewith; and it is certainly at least very doubtful whether there was in fact any such defect. The jury, however, upon very weak evidence, found that there was such a defect; and for the purposes of this case we shall assume that there was. The question then arises, is the defendant liable because of such defect, and upon the other facts of this case? We think not. It must be remembered that the question in this case does not arise between the railroad company and a passenger, or between the railroad company and some third person having no connection or contract relation with the railroad company; but it arises between the railroad company and one of its employees, who by reason of his employment has assumed all the ordinary risks and hazards incident to his employment. A passenger pays to be protected from all the risks and hazards incident to the operation of a railroad from which the railroad company can by the highest degree of skill and care protect him; while an employee of the railroad company is paid to assume all the risks and hazards incident to his employment; and a third person having no connection or contract relation with the railroad company stands upon his original legal rights, being neither protected by the railroad company nor assuming any of the dangers, risks or hazards incident to the operation of the railroad; and while such third person may not be placed in the same highly favorable situation with regard to dangers, risks and hazards as a passenger is, yet he is placed in a much more favorable situation than a mere employee of the railroad company who is paid to take the risks and hazards of his employment. Hence, differences in the rules governing these various relations must be expected.

Mr. Thompson, in his work on Negligence, uses the following language: "In an action by an employee against his employer for injuries sustained by the former in the course of his employment, from defective appliances, the presumption is that the appliances were not defective; and when it is shown that they were, then there is a further presumption that the employer had no notice or knowledge of this fact, and was not negligently ignorant of it." Thompson on Negligence, p. 1,053, § 48.

Mr. Wood, in his work on "Master and Servant, uses the following language: "The servant seeking to recover for an injury, takes the burden upon himself of establishing negligence on the part of the master, and due care on his part. And he is met by two presumptions, both of which he must overcome in order to entitle him to a recovery. First, that the master has discharged his duty to him by providing suitable instrumentalities for the business, and in keeping them in condition, and this involves proof of something more than the mere fact that the injury resulted from a defect in the machinery. It imposes upon him the burden of showing that the master had notice of the defect, or that in the exercise of that ordinary care which he is bound to observe, he would have

known it. When this is established, he is met by another presumption, the force of which must be overcome by him, and that is that he assumed all the usual and ordinary hazards of the business," etc. Wood on Master and Servant, § 382.

Shearman and Redfield, in their work on Negligence, use the following language: "In actions brought by servants against their master, the burden of proof as to the master's knowledge, or culpability in lacking knowledge of the defect which led to the injury, whether in the character of a fellow-servant, or in the quality of materials used, rests upon the plaintiff." Shearman and Redfield on Negligence, § 99.

Mr. Pierce, in his work on Railroads, uses the following language: "The company's knowledge of a defect must be proved in order to make it liable for the consequences; but such knowledge may be shown by circumstances, as the length of time it existed before the injury, or by a notice given to an employee who had an express or implied authority to receive it. The fact that the servant complained of a defect in the road or its appointment, is admissible in proof of the company's knowledge." Pierce on Railroads, 373.

"The burden of proof is on the servant to show that the company was negligent, and that his own negligence did not contribute to the injury; and where the injury was caused by defects in the road or its appointments, that the company knew, or ought to have known them, or negligently employed incompetent persons to construct or repair them; and where it is alleged to have been caused by the incompetency of fellow-servants, that the servant was incompetent, and the company knew, or ought to have known, of such incompetency; and he must show that he did not himself, before the injury, know of such defects or incompetency. The company's negligence is not to be inferred from the fact of injury by a collision of trains, or by an explosion of engines, even in jurisdictions where negligence is implied from the collision or explosion in cases of injuries to passengers or third persons." Pierce on Railroads, 382.

The Supreme Court of Iowa, in a recent decision, uses the following language: "As to driving in the draw-head, there is no evidence whatever that any of the officers of the defendant had any knowledge that the draw-bar was in any way defective, or that it was defective in its original construction. Without some evidence of this question there could be no recovery for that defect, if there was any defect." Skellinger v. C. & N. W. R. Co., 61 Iowa, 714; s. c., 12 Am. & Eng. Rail. Cases, 206, 207.

There is a vast number of other cases announcing the same principles and sustaining the elementary works above cited, so far as we wish to apply them to this case, among which are the following: DeGraff v. N. Y. C. & H. R. Co., 76 N. Y. 125; Warner v. E. R. Co., 39 N. Y. 468; Elliott v. St. L. & I. M. R. Co., 67 Mo. 272; M. & O. R. Co. v. Thomas, 42 Ala. 672; C. C. & I. R. Co. v. Troesch, 68 Ill. 545; C. & A. R. Co. v. Platt, 89 Ill. 141; I. B. & W. R. Co. v. Toy, 71 Ill. 474; E. St. L. P. & P. Co. v. Hightower, 92 Ill. 139; Wonder v. B. & O. R. Co., 32 Md. 411; Ballou v. C. M. & St. P. R. Co., 54 Wis. 257; s. c., 5 Am. & Eng. R. Cases, 480, and note, 504; Smith v. C. M. & St. P. R. Co., 42 Wis. 520; Flannagan v. C. & N. W. R. Co., 50 Wis. 462; Ladd v. N. B. R. Co., 119 Mass. 412; Quincy Mining Co. v. Kitts, 42 Mich. 34; C. & I. C. R. Co. v. Arnold, 31 Ind. 174; M. P. R. Co. v. Lyde, 57 Tex. 505; s. c., 11 Am. & Eng. R. Cases, 188.

We think the following principles are deducible from the foregoing authorities, and are sound law: 1. An employee of a railroad company by virtue of his employment assumes all the ordinary and usual risks and hazards incident to his employment. 2. As between a railroad company and its employees, the railroad company is not an insurer of the perfection of any of its machinery, appliances or instrumentalities for the operation of its railroad. 3. As between a railroad company and its employees, the railroad company is required to exercise reasonable and ordinary care and diligence, and only such, in furnishing to its employees reasonably safe machinery and instrumentalities for the operation of its railroad. 4. It will be presumed, in the absence of anything to the contrary, that the railroad company performs its duty in such cases, and the burden of proving otherwise will rest upon the party asserting that the railroad company has not performed its duty. 5. And where an employee seeks to recover damages for injuries resulting from insufficiency of any of the machinery or instrumentalities furnished by the railroad company, it will not only devolve upon such employee to prove such insufficiency, but it will also devolve upon him to show either that the railroad company had notice of the defects, imperfections or insufficiencies complained of, or that by the exercise of reasonable and ordinary care and diligence it might have obtained such notice. 6. And proof of a single defective or imperfect operation of any of such machinery or instrumentalities resulting in injury will not of itself be sufficient evidence, nor any evidence, that the company had previous knowledge or notice of any supposed or alleged defect, imperfection or insufficiency in such machinery or instrumentalities. 7. As between a railroad company and its employees, the railroad company is not necessarily negligent in the use of defective machinery, not obviously defective, but it is negligent in such cases only where it has notice of the defects, or where it has failed to exercise reasonable and ordinary diligence in discovering them and in remedying them.

The decisions in this State are, so far as they go, in consonance with the decisions elsewhere: Kelly v. Detroit Bridge Works, 17 Kas. 558, 562; M. P. R. Co. v. Haley, 25 Kas. 35, 56, 62, 63; A. T. & S. F. R. Co. v. Holt, 29 Kas. 149; Jackson v. K. C. L. & S. K. R. Co., 31 Kas. 761; s. c., 3 Pac. Rep. 501.

In the present case, as no negligence is imputed to the railroad company, except in using a passenger coach with a draw-bar connected with a defective spring, or with some other defective appliance, and as it is not shown that the railroad company, or any of its employees, or, indeed, any other person, had any knowledge or notice of such defect prior to the occurrence of the accident upon which the plaintiff's action is founded, it cannot be said that any negligence whatever upon the part of the railroad company has been shown; and the verdict and judgment in the court below should have been rendered in favor of the railroad company; but they were not, but, on the contrary, both were rendered against the railroad company. After the verdict was rendered, the defendant moved the court to set it aside and ask for a new trial, upon various grounds, among which were the grounds that the verdict was not sustained by sufficient evidence and was contrary to law; but the court overruled the motion and rendered the judgment aforesaid. Of course by this ruling the court approved the verdict of the jury. But as the verdict and judgment are not sustained by sufficient evidence, although approved by the trial court, it becomes the duty of this court to set them aside and grant a new trial. It has frequently been held in this court that whenever the verdict of a jury, or any necessary and material fact involved in the verdict, is not sustained by the evidence, or by any sufficient evidence, the Supreme Court will set it aside and grant a new trial, although the verdict may have been approved by the trial court. Backus v. Clark, 1 Kas. 304; Ermul v. Kullok, 3 Kas. 499; Howe v. Lincoln, 23 Kas. 463; Irwin v. Thompson, 27 Kas. 643; U. P. R. Co. v. Dyche, 28 Kas. 200, 206; Johnson v. Burnes, 29 Kas. 81, 86; Reynolds v. Fleming, 30 Kas. 106; Babcock v. Dieter, 30 Kas. 172.

The judgment of the court below will be reversed and cause remanded for a new trial.

WEEKLY DIGEST OF RECENT CASES.

1. BONDS—[*Injunction*]—*Condition and Measure of Damages on Bond Given by Complainant for Restraining Order.*—A bond given by complainant for a restraining order in U. S. Circuit court in equity, conditioned that the obligors will pay such damages as the party aggrieved may recover against them, can be sued on in State court before any recovery has been had, and for the purpose of effecting the recovery for which the bond provided, and counsel fees paid for services in setting aside the restraining order will be considered as an element of damages. *Aiken v. Leathers*, S. C. La., New Orleans, May 18, 1885.

2. CO-TENANCIES.—[*Lien*]—*Co-Tenant no Lien for Rent on Share of Other Co-Tenant.*—A joint tenant or tenant in common is not entitled to a lien upon the share of his co-tenant for rents collected by the latter before partition. [In giving the opinion of the court Lewis, J., says: "We have not been referred by counsel to any authority, nor have we been able to find any recognizing the existence of a lien in favor of one tenant in common or joint tenant upon the interest of his co-tenant for the payment of the value of rents and profits received by the latter before partition of the land. It has been held by this court that a tenant in common purchasing a conflicting claim to land which enures to the benefit of his co-tenant, has an equitable lien for a due proportion of the price so paid by him. Venable, etc. v. Beauchamp, 3 Dana, 321. It has also been held that there may in certain cases exist a lien on the estate for repairs and improvements done by one joint owner. Alexander v. Ellison, etc., 79 Ky., 148. But it never has been held by this court that rents and profits received by one joint owner previous to partition of the land, constitute anything more than a personal charge against him. The lien in favor of one joint owner of land, whenever recognized to exist at all, is founded upon the doctrine of contribution in equity, and the only reason for enforcing it for improvements arises from the necessity for the preservation of the estate, or the benefit to the joint owners by an enhancement of its value. But there is no reason why there should be a charge or incumbrance upon the interest of one joint owner, either before or after partition, to satisfy a claim of his co-tenant for rents and profits received. The right to partition exists and may be enforced, and pending the action therefor, the chancellor may amply protect the rights of each joint owner, by placing the estate in the hands of a receiver, or by other proper provisional remedy. But it is not the policy of the law to enforce liens upon the interest of one joint owner of land in favor of another for unadjusted, and to innocent purchasers and creditors often unknown, accounts for rents and profits."] *Burch's Heirs v. Burch's Heirs*, Ky. Ct. of App., March 31, 1885; 6 Ky. Law Repr. 691.

3. CONSTITUTIONAL LAW—[*Legislative Bills*]—*Reading Bills in Legislature.*—§ 15, art. IV, of the constitution, requiring that every bill shall be read on three several days in each house, does not require reading thereof in each house on three several days after amendment. *People v. Thompson*, S. C. Cal., May 28, 1885; 6 W. C. Rep. 564.

4. CRIMINAL LAW—[*Larceny*]—*Larceny of Planted Oysters.*—Oysters, when taken and reduced to possession, are the property of the captor and may be the subject of larceny. Being sedentary and incapable of locomotion, they are not properly *feræ naturæ*, and property in them is not forfeited by restoring them to their natural element, when they are bedded there by their owner for purposes of preservation and growth, when the beds are marked by poles or other visible *indicia* of ownership, and when the place is not a natural oyster bed. *State v. Casselari*, S. C. La., New Orleans, May 25, 1885.

5. CRIMINAL PROCEDURE—[*Arrest*]—*What Notice the Officer is Bound to Give of His Official Character and Purpose.*—When an officer is empowered by law to arrest without warrant, he is not in every case bound before making the arrest, to give the party to be arrested clear and distinct notice of his purpose to make the arrest, and also of the fact that he is legally qualified to make it. Where the offender in question is openly and notoriously engaged in breaking the law, as for example, where he is maintaining a gambling-table in a public place, it is sufficient for the officer to announce his official position, and demand a surrender. If this is refused, the officer is not liable to indictment for assault when he endeavors by force to secure his prisoner. [In the opinion of the court, by Sterrett, J., it is said: "One of the questions involved in the second specification is whether an officer, authorized to arrest without warrant, is bound, before doing so, 'to give the party to be arrested clear and distinct notice of his purpose to make the arrest, and also of the fact that he is legally qualified to make it.'" In other words, may the officer be convicted of assault and battery for making the arrest without first giving such notice? While in most cases, it may be prudent for the officer to give the notice before making the arrest, it is going too far to say in effect that he is required to do so; and, therefore, we think the learned judge erred in charging the jury as he did on that subject. In considering the question as presented by the undisputed facts of this case, it is fair to assume that the constable and his assistants, plaintiffs in error, were authorized to make the arrest; that the authority, with which the constable was expressly clothed by the act, was at least equivalent to a warrant. It is doubtless the duty of an officer who executes a warrant of arrest to state the nature and substance of the process which gives him the authority he professes to exercise, and, if it is demanded, to exhibit his warrant that the party arrested may have no excuse for resistance (1 Chit. Cr. L. 51). On the other hand, as is said in Commonwealth v. Cooley, (72 Mass. R. 350, 356), "the accused is required to submit to the arrest, to yield himself immediately and peaceably into the custody of the officer, who can have no opportunity until he has brought his prisoner into safe custody to make him acquainted with the cause of his arrest, and the nature, substance, and contents of the warrant under which it is made. These are obviously successive steps. They cannot all occur at the same instant of time. The explanation must follow the arrest, and the exhibition and perusal of the warrant must come after the authority of the officer has been acknowledged and his power over his prisoner has been acquiesced in." The general principle thus stated is equally applicable to arrests without warrant under authority of the statute."] *Shoolin v. Com.*, S. C. Pa., April 16, 1884; 15 Weekly Notes of Cases, 410.

6. COUNTY—[*Criminal Procedure*]—*Liability for Board of Jury in Murder Case.*—When the court, on trial of a murder case, considers it necessary to have the jury secluded, and by its order they are boarded at a hotel, the county where the case is tried, will be held liable for the expense thus incurred, and a *mandamus* will issue to compel the board of supervisors to audit the claim of the hotel-keeper. [Campbell, J., in giving the opinion of the court said: ["The fact that there are not many authorities on this subject rather tends to indicate acquiescence in this practice than otherwise. There is, however, some authority upon it. In civil cases, the charges are not usually allowed against the county, as the jury will seldom be put apart during trial, and the whole matter of their maintainance is arranged by consent, where this is done. The rule in civil cases is laid down in Young v. Buncombe, 76 N. C. 316. But in criminal cases the power of the court to keep them in custody, and to bind the county to pay their maintenance, is established by several cases, and is believed to have been done without dispute heretofore in this State. For cases elsewhere, see Fernekes v. Supervisors, 43 Wis. 303; Com. v. Clue, 3 Rawle, 498; Com's v. Hall, 7 Watts, 290; State v. Engle, 13 Ohio, 492; Sargent v. State, 11 Ohio, 474; State v Armstrong, 19 Ohio, 116; Commissioners of Alleghany Co. v. Commissioners of Howard Co., 57 Md. 393; Bates v. Independence Co., 23 Ark. 723. The latter case is chiefly significant as showing it to be a county charge. Of the power of courts to incur similar expenses generally for court exigencies, so as to bind the county, without statute, the authorities are quite clear. People v. Stout, 23 Barb. 349; McCalmont v. Allegheny Co., 29 Pa. St. 417; Supervisors of Crawford Co. v. LeClerc, 4 Chand. 56; White v. Polk Co., 17 Iowa, 413. Our own decisions have always held that while the supervisors are, under the constitution, exclusive judges of the propriety of services for the county, yet they have no such exclusive power over those county charges that are not for such services; and we have also held that the expenses of justice are incurred for the benefit of the State, and only charged against the counties in accordance with old usage, as a proper method of distributing the burden. People v. Auditors of Wayne Co., 13 Mich. 233. Also cases in note to Kennedy v. Gies, 25 Mich. 83, (Annotated Ed.) Any other rule would put it in the power of a board of supervisors to prevent courts from exercising their proper functions. In my opinion the supervisors were bound to audit this account.] *Stowell v. Jackson*, S. C. Mich., May 13, 1885; 23 N. W. Rep. 557.

7. DEBTOR AND CREDITOR.—[*Sale of Personalty.*] *Vendor of Personalty on Condition, no Title against Creditor of Vendee, when.*—Where originally an absolute sale of certain personal property is made, under which the purchaser takes possession, and, subsequently, finding himself unable to pay, takes a lease of the property from his vendor, on compliance with the terms of which a bill of sale is to be made out, no change of the actual possession taking place, the vendor has no title as against creditors of the vendee. *Wagner v. Commonwealth*, S. C. Pa., March 25, 1885; 16 Weekly Notes of Cases, 75.

8. FIRE INSURANCE.—[*Increase of Hazard.*]—*When Alterations must have been made by Tenant with Consent of Owner.*—Where a fire insurance policy provides that any change increasing the hazard, either within the premises or adjacent thereto, within the control of or known to the assured, and not reported to the company and agreed to by indorsement thereon, will render the policy null and void. To defeat a recovery in action for loss, the company must affirmatively prove that changes made by a tenant, which increased the hazard, were made by the consent of the owner or his agent. *Merrill v. Insurance Co.*, U. S. Cir. Ct., Dist. Minn., March, 1885; 23 Fed. Rep., 245.

9. ———. [*Proofs of Loss.*]—*False Statements must be Knowingly False.*—A false statement in

the proofs of loss, to defeat a recovery, must be false to the knowledge of the assured, and made for the purpose of defrauding the company. *Ibid.*

10. INSOLVENCY.—[*Assignee.*]—*When Suit Cannot be Brought before Demand made on Assignee to Sue.*—No suit can be brought against the assignee of an insolvent, and a creditor to whom he has made a conveyance in fraud of his other creditors, until a demand has been made upon the assignee to sue, and he has refused so to do. *Richardson v. Day*, U. S. Cir. Ct., N. D. Ill., Feb. 15, 1885; 23 Fed. Rep. 227.

11. JUDGMENT. [*Presumption of Payment—Question for Jury.*]—*When Payment a Question for Jury where Twenty Years have not Elapsed.*—Where twenty years have not elapsed since the rendition of a judgment, on a *scire facias quare executionem non*, the question whether the judgment has been paid may be submitted to the jury, if, in addition to lapse of time, there are circumstances persuasive of the conclusion of payment. If there are no such circumstances, the question cannot be submitted to the jury unless twenty years have elapsed. [In the opinion of the court so holding, Green, J., said: "In the recent case of Peter's Appeal, not yet reported, our brother Paxson, delivering the opinion of the court, said: "After a lapse of twenty years mortgages, judgments, and all evidences of debt are presumed to be paid (Foulk v. Brown, 2 Watts, 209); and a recognizance in the Orphans' Court (Beale v. Kirk, 3 Norris, 415); and in less than twenty years, with circumstances, payment may be presumed (Hughes v. Hughes, 4 P. F. S. 240; Brigg's Appeal, 12 Norris, 485). After twenty years the law presumes that every debt is paid, no matter how solemn the instrument may be by which such debt is evidenced. And such presumption stands until rebutted." In Moore v. Smith (31 P. F. S. 182), we said: "A legal presumption of payment does not indeed arise short of twenty years, yet it has been held that a less period with persuasive circumstances tending to support it may be submitted to the jury as ground for a presumption of fact." In Henderson v. Lewis (9 S. & R. on p. 384), Gibson, J., said: "When less than twenty years has intervened no legal presumption arises; and the case not being within the rule, is determined on all the circumstances, among which the actual lapse of time, as it is of a greater or less extent, will have a greater or less operation." In that case a period between sixteen and seventeen years had elapsed and was held sufficient with proper circumstances. The same doctrine was stated in Hughes v. Hughes (4 P. F. S. 240), and Thompson, J., added to the statement: "Slight circumstances may be given in evidence for that purpose in proportion as the presumption strengthens by lapse or time. In Diamond v. Tobias (2 Jones, 312), Coulter, J., said: "The rule is well established that where the period is short of twenty years the presumption of payment must be aided by other circumstances beside the mere lapse of time. But exactly what these circumstances may be, never has been and never will be defined by the law. There must be some circumstance; and where there are any, it is safe to leave them to the jury." In Brigg's Appeal (12 Norr. on p. 488), Mr. Justice Sterrett says: "While the general rule undoubtedly is that the presumption does not arise until twenty years have elapsed, it is well settled that a shorter period than that, aided by circumstances which contribute to strengthen such presumption, may furnish sufficient grounds for inferring the fact of payment."] *Hess v. Frankenfeld*, S. C. Pa., April 28, 1884; 15 Weekly Notes of Cases, 405.

12. MARRIED WOMAN—*Can Charge her Separate Estate by Parol Contract.*—A contract by which a married woman charges her separate estate, in equity, with the payment of a debt, need not be in writing. *Elliott v. Lawhead*, S. C. Ohio, April 28, 1885, 13 Weekly Law Bulletin, 601.

13. ———. *Action to Enforce such Charge is an Equitable Action.*—An action founded on such a contract, where a personal judgment against a married woman is not authorized, is of an equitable nature, of which a court of equity alone has jurisdiction. *Ibid.*

14. ———. *Rule that Creditor must Exhaust Remedy at Law not Applicable.*—The rule that a creditor must exhaust his remedy at law before seeking equitable relief, does not apply to an action to charge the separate estate of a married woman for the payment of a claim, where the statute gives no remedy at law. *Ibid.*

15. ———. *Prior Proceeding by Attachment no Bar to Remedy in Equity.*—A prior action to recover a money judgment, in which it is sought to reach the same separate property by attachment, in which the plaintiff fails, is no bar to a suit in equity to charge such separate property, with the payment of the same claim. *Ibid.*

16. MUNICIPAL CORPORATION. — [*License Tax.*]—*Power to Tax Employments Construed not to Include Railroad Companies.*—Authority granted by charter to the City of L to impose a license tax upon persons engaged in certain enumerated callings, and "upon any other person or employment which it may deem proper, whether such person or employment be herein specially enumerated or not," does not empower the city to impose such a tax upon a railroad corporation doing business therein. The rule of construction applicable in such a case is, that when a particular class of persons or things is spoken of in a statute, and general words follow, the class first mentioned must be taken as the most comprehensive, and the general words treated as referring to matters *ejusdem generis* with such class. [The court, per Hinton, J., after deferring to the doctrine that grants of power to municipal corporations are construed strictly, says: "Now, it is undeniably true that, for civil purposes, corporations are deemed and taken as persons when the circumstances in which they are placed are identical with those of natural persons expressly included in the statute. Balto. & Ohio R. Co. v. Gallahue, 12 Gratt. 663; and perhaps, under our Code, ch. 15, § 13, p. 195, which provides that the word person may extend and be applied to bodies politic and corporate as well as individuals, that word 'person' must be held to embrace, even in statutes which confer the power of taxation, artificial as well as living beings, unless there be something in the subject matter, object, words or frame of the act, indicating that such was not the purpose of the legislative mind. Western Union Tel. Co. v. Richmond City, 26 Gratt. 1: Miller v. Commonwealth, 27 Gratt. 110. This, however, is not the ordinary sense in which this word is used, and it cannot be denied that in its usual and common acceptation it does not extend to corporations. It is equally true that the word "employment," in its ordinary and natural acceptation, does not extend to or include either a railroad corporation or

its business. In the case of The City Council v. Lee, 3 Brev. R. 227, Nott, J., in discussing the question whether a tax "on all profits or income arising from the pursuits of any faculty, profession, occupation, trade or employment," included the salaries of public officers, said: "The word 'employment' is the only word under which it is pretended that they can be included. I do not know," says he, "that this word is anywhere used as a technical term. It is a common word, generally used in relation to the most common pursuits, and, therefore, ought to be received by this court as understood in common parlance. And so we think it must be understood in this case. If, therefore, the words "persons and employment," used in this statute, are to be taken according to their natural import, it will be at once seen that they cannot be held to comprehend a railroad corporation, which is neither a person nor an employment within the ordinary acceptation of those words. Nay, more, if we shall find no language in the statute indicating that these words were used with reference to a higher and different class of persons and employments than those enumerated in the preceding special words, we must construe the words persons and employments as applicable to persons and employments *ejusdem generis* with the enumerated classes; for the well established rule in the construction of statutes is, that where particular words are followed by general ones, the latter are to be held as applying to persons and things of the same kind with those which precede. Potter's Dwarris, 236. Which means no more, as has been acutely observed by a learned judge, than this, that the law should be construed according to the apparent intention of the legislature, to be gathered from the language used connected with the subject of legislation, so that its terms shall not be extended by implication beyond the legitimate scope of import of the words used. Wagner, J., in City of St. Louis v. Laughlin, 49 Mo. 563. But it has been argued with great power and ability that these words, when taken, as they must be, in connection with the words which follow them, are broad enough to include railroad corporations, and plainly manifest an intention on the part of the legislature to exclude the application of the rule of *ejusdem generis* from this statute. Such, however, does not seem to us, after a careful consideration of the terms of the statute, to be the case. For the words "which it may deem proper," taken in the connection in which they are found, do not seem to be entitled to any special significance. They do, indeed, confer in express terms a discretion which the council would doubtless have had if they had been entirely omitted. But that discretion, far from enlarging and elevating the power of the council, in the matter of taxation, to subjects of a higher degree, really imports a discretion in the council to tax only such subjects analogous to the enumerated classes as the council may see fit to select. And whilst the obvious import of the words "whether such person or employment be herein specially enumerated or not, and whether any tax be imposed thereon by the State or not," is to extend the power of the city to tax other persons and employments than the enumerated classes, regardless of whether they are taxed by the State or not, it cannot be said to necessarily convey the idea that these new taxable subjects shall be different in character or higher in degree. After a careful examination of the act, we are unable to discover anything which clearly indicates an intention on the part of the legislature to confer upon this municipal council the power to tax railroad corporations under cover of these general words. We must therefore hold, in accordance with the uniform current of authority, that the general words here used are restricted to such persons and employments as may be analogous to those previously mentioned. In Sandiman v. Breach, 7 Barn. & Cress., 96, the words "other person or persons" was held not to have been used in a sense large enough to include the owner and driver of a stage coach. In Casher v. Holmes, 2 Barn. & Adolp. 596, the words "all other metals" were held not to include gold and silver, which are precious metals. In Rex v. Cleworth, 4 B. & S. (116 E. C. L.), 927, a farmer was held not to be within the Stat. 29, Car. 2, c. 7, § 1, which enacts that no tradesman, artificer, workman, laborer, or other person whatsoever, shall do or exercise any worldly labor, business or work of their ordinary callings, upon the Lord's Day or any part thereof," etc. In Butler's Appeal, 73 Penn. St. R. 452, the clause "also all other places of business or amusement conducted for profit," were held not broad enough to embrace bankers, brewers or druggists. And in the City of St. Louis v. Laughlin, 49 Mo. 564, the sweeping words "all other business, trades, avocations or professions whatever," were held not to include persons not of the same generic character or class with the specifically enumerated classes, and hence the City of St. Louis had no power to pass an ordinance levying a tax on attorneys-at-law. See also Broom's Legal Maxims, 7 ed. 651."] *Lynchburg v. Railroad Co.*, Va. Sup. Ct. of App., Feb. 19, 1885; 9 Va. L. J. 377.

17. NEGLIGENCE [*Master and Servant—Parent and Child*]—*Railway Company, when liable to Father of Minor Employee for Negligent Injury.*—A railroad employing a minor to act as brakesman or in any other dangerous capacity, without the knowledge or consent of his father, assumes all risks incident to such service, and is liable to the father for injuries sustained by the boy in the course of the employment, though occasioned by the boy's own negligence or unskillfulness. [The injured minor was sixteen years old. He had been employed by the company for wages, but had been discharged. When injured he was voluntarily acting as brakeman with the consent of the train conductor. Holt, J., in giving the opinion of the court, said: "It is not necessary that he should have been employed for wages when the injury was received in order that the father may recover. If he was then rendering service for the appellant by the request or direction of its general agent as to the business in hand, and which was certainly of a character dangerous to life and limb, then being under age, it was a wrongful interference with the right of the appellee to control him. The conductor knew from his appearance that he was under age, and he received and used him. This was an exercise of dominion and illegal control over him by the general agent of the appellant at war with the father's rights. The appellant cannot shelter under the claim that it did not know that the apellee objected to the son rendering the service, since it was its duty to know that the appellee was willing to it before it took control of him. The duty of the father to educate and maintain the son entitled the former to the son's services, and placed him in the attitude of a master to him or created the relation of master and servant; and any interference with the master's right to control the servant by another renders the latter liable at least

for any injury that was likely to result from such illegal conduct. If one engages the servant of another in an obviously dangerous business, he renders himself responsible for any injury the servant may sustain while so engaged, and which can rationally be attributed to the undertaking; and this is so, even if the injury results immediately from the neglect or unskillfulness of the servant, owing to the fact that the person by so illegally interfering assumes all the risk incident to the service."] *Louisville etc. R. Co. v. Willis*, Ky. Ct. App., May 7, 1885; 6 Ky. Law Repr. 784.

18. NEGOTIABLE INSTRUMENTS [*Payment*]—*Party Bound for Payment cannot take up and Re-issue.*—If one, not a party to a note, but bound for its payment at maturity, actually so pays it, the note is thereby discharged, and cannot be re-issued by such party. [In giving the opinion of the court, Lewis, P. J., said: "In Lancey v. Clark, 64 N. Y. 209, the defendant made his note for the accommodation of the firm of Lambert & Lincoln, for whom it was discounted. Before the note matured, Lincoln wrote to the plaintiff to take up the note and to furnish money for that purpose. The plaintiff sent the money to Lincoln, who placed it in bank to his individual credit, and on the day the note fell due took up the note with his individual check. He did not assume to act for the plaintiff or ask to have the note transferred to any one. He asked to have the note protested so that he could hold the indorser and maker after protest. After he had thus paid and taken it, he sent it to the plaintiff. In an action on the note it was held that the plaintiff did not take title from the bank, but from Lincoln, and subject to any defense against it in the hands of the latter; that the bank could not be made a seller without its knowledge or consent and did not transfer the note but only took payment, and that the plaintiff was not entitled to recover. The court said: 'The plaintiff did not take title from the bank. It matters not that he furnished the money, and that Lincoln promised to use it in taking up the note for him. It matters not that the note was protested so that the indorser and maker could be held, or that the bank did not intend absolutely to discharge and cancel the note. The question is, did the bank transfer or sell the note to the plaintiff? * * * All the bank did was to take payment of the note, and deliver it up to the party paying and liable to pay, after protesting it, so that he could make such use of it as the law and the facts would authorize. It did not transfer or intend to transfer it. The plaintiff, therefore, took no title to it from the bank, but he took it from Lincoln, and cannot, therefore, enforce it against the defendant.' The same principle was asserted in Eastman v. Plumer, 32 N. H. 238. In that case the defendant executed the note upon which the suit was brought as surety. At its maturity it was taken up by the principal debtor with money furnished for the purpose by the plaintiff. Thereupon the note was surrendered, but the plaintiff was not known in the transaction by the holder to whom the money was paid. It was held that the note was satisfied. and that the action was not maintainable. To the same effect is the opinion of Judge Hughes, of the United States District Court, in Dooley v. F. & M. Ins. Co., 3 Hughes 221; see also 2 Daniel on Neg. Insts., § 1222."] *Citizen's Bank v. Lay*, Va. Ct. App., April 16, 1885; 9 Va. L. J. 499.

19. NUISANCE—[*Highway.*]—*Railroad Switch when a Nuisance to Abutting Owner.*—A railroad switch or turn-out, laid without lawful permission on part of a public street, is a nuisance which the owner of property in front of which the same is used is entitled to have abated, as inflicting injury peculiar to himself, but such owner has no standing to champion the rights of others, in front of whose property the switch is laid with municipal authority and who do not complain. *Bell v. Edwards*, Sup. Court of La., New Orleans, May 18, 1885.

20. PARTNERSHIP.—[*Lien.*]—*Lien of Partner on Partnership Realty.*—Where a firm of lawyers take a tract of land in payment of a fee and hold it in their joint names, an individual creditor of one of them can not subject the land until the co-partner had first been paid what is due him on a settlement of the partnership accounts. [In the opinion of the court Holt, J., says: "It is unnecessary to review the numerous cases. To do so we would have to begin with the opinions of Lord Thurlow upon one side and those of Lord Eldon upon the other; and we shall content ourselves with saying, that we think the true principle, deducible from all of them, is that if real property has been purchased with the firm means, and is held in the joint names of the partners as partnership property, then, in the absense of any agreement between them to the contrary, it should be regarded at law as held and owned by them as tenants in common; but that in equity it should be treated as held by them in trust for the firm; subject to the rules applicable to partnership personal property, and liable to the debts of the firm, and the claims of each partner upon the others; and after these claims are satisfied the residue of it, if any be left, will belong both at law and in equity to the partners as tenants in common unless they have by an agreement, either express or implied, impressed upon it the character of personal property for all purposes. It is really a question of intention upon the part of the partners, to be gathered from all the attending circumstances, without regard to whether the title is vested in one of the partners for the firm or all of them. It must be assumed in all cases, unless a contrary intention be shown, that the partners intended that the partnership real estate should be treated as partnership assets, and therefore as personalty, so far as it may be necessary to pay the partnership debts, and the claims of the partners *inter se;* while the modern rule is that in order to convert it into personalty for purposes beyond these, or for all, there must be an agreement, either express or implied, to do so."] *Flanagan v. Shock*, Ky. Ct. of App., March 28, 1885; 6 Ky. Law Repr. 699.

21. PARTNERSHIP. — [*Real Estate.*] — *Rights of Partners inter sese in Respect of Partnership Realty not held in Firm's Name, etc.*—Where the title to real estate used for partnership purposes is not in the firm, the presumption is that it is not firm property. In order to rebut this presumption, as between the partners, it must appear that it was paid for with the firm's money, or was by agreement actually brought into the common stock. A., B., C., and E., co-partners trading as A., B., C. & Co. purchased as tenants in common a slate quarry which was not purchased with the firm's money, agreeing at the time that it should become partnership property, but never working it under the firm name, but under the name of A., B., C., D. & Co., and keep separate accounts from those of the other firm. They subsequently sold the property, giving a deed signed by A., B., C. & E., and took notes in

payment therefor in their individual names. In a claim by one of the parties, controlling eight-fifteenth interest in the property and in the firm, against the administrator of another to whom the money had been paid upon one of the notes: *Held*, that the money so paid was not partnership assets, and that the rights of the parties to the fund might be adjudicated by the Orphan's Court. [In the opinion of the court by Clark, J., it is said: "The title was not obtained with the firm's money, nor is it in the firm's name, it was to the partners individually; it contained upon its face no assertion that the land or quarry was to be treated as partnership property. If the question were one affecting purchasers or lien creditors, this fact would be conclusive. (Ridgeway, Budd & Co.'s Appeal, 3 Harris, 181; Lancaster Bank v. Myley, 1 Harris, 159; Lefevre's Appeal, 19 P. F. S. 122; Ebbert's Appeal, 20 P. F. S. 79; Holt's Appeal, 2 Out. 257; Nat. Bank's Appeal, 2 Norris, 204; Geddes' Appeal, 3 Norris, 482.) But as the case involves simply the relation of the partners to each other, in respect to the partnership property, it is evidential only as to their intent. (Abbott's Appeal, 14 Wr. 238; Erwin's Appeal, 3 Wr. 535.) As between partners themselves, real estate may in some instances be shown to be firm property, notwithstanding the title may be to one of them only, or to all, in form as tenants in common. As the slate quarry was not paid for with the firm's money and the deed is not in the firm name, whether it shall be considered partnership property depends largely upon the intention of the partners; that intention may be shown by parol; it may be manifested in the acts and declarations of the parties."] Shafer's Appeal, S. C. Pa., March 14, 1884; 15 Weekly Notes of Cases, 407.

22. RAILWAYS. — [*Connecting Lines.*] — *Company Selling Ticket over other Lines Acts as Agent.*— Through tickets in the form of coupons sold to a passenger by one railroad company entitling him to pass over successive connecting lines of road, in the absence of an express agreement, creates no contract with the company selling the same to carry him beyond the line of its own road, but they are distinct tickets for each road, sold by the first company, as agent for the others, so far as the passenger is concerned. The law is different in respect to the transportation of freights. A passenger bought of the W. St. L. & P. Ry. Company to Omaha, a coupon ticket from that place to the city of New York, calling for passage over the road of that company to St. Louis, and from thence to New York over the O. & M., the M. & C., the B. & O., the P. M. & B., and the Pennsylvania Railroad lines. The ticket on its face had printed: "In selling this ticket for passage over other roads, this company acts only as agent for them, and assumes no responsibility beyond its own line," and the coupons over the Pennsylvania declared, "issued by the W. St. L. & P. Ry., on account of Pennsylvania Railroad," which the company owning the latter road refused to accept, and on refusal to pay the regular fare demanded, ejected the passenger: *Held*, in a suit by the passenger against the latter company, that the first named company contracted with the passenger only as agent of the defendant company. When a coupon ticket has been sold, calling for passage over several distinct lines of railroad, the rights of the passenger, and the duty and responsibility of the several companies over which the passenger is entitled to a passage, are the same as if he had purchased a ticket at the office of each company constituting the through line. *Pa. R. Co. v. Connell*, S. C. Ill. (Ottawa,) Oct. 31, 1884.

23. RECEIVERS.—[*Inter State Law.*]—*Foreign Receiver cannot Intervene and Claim Attached Property.*—In a proceeding where a non-resident creditor has attached in Louisiana, property of a non-resident debtor fraudulently brought into this State, the rights thus acquired cannot be defeated by a receiver appointed under a creditor's bill by a court of another State by means of an intervention in which he claims the property as receiver, for the purpose of bringing the same within the jurisdiction of the court whence he holds his appointment. The general rule being that such a receiver is the mere creature of the court appointing him, and his powers cannot be exercised beyond the confines of that State. *Lichtenstein v. Gillette*, S. C. of La., New Orleans, May 18, 1885.

RECENT PUBLICATIONS.

RAILROADS AND THE COURTS.—The Railroads and the Courts. By Hiram T. Gilbert, of the Illinois Bar, Ottawa, Ill.; Published by the Author, 1885.

The above is the title page of one of the most remarkable law books which has been recently issued from the press. We take it for granted that no lawyer will have the hardihood to cite it to the Supreme Court of Illinois in any pending cause; because, from beginning to end, it is little else than a bold arraignment of the course of decision in that court in favor of the railroad company against people who sue the railroad company for damages. The author commences his preface with the following remarkable statement:

"Out of a total of seventeen judgments rendered by the Circuit Courts against the four leading railroad companies of this State, in actions which came before the Supreme Court for review during a period of eleven years, (from June 1873, to June 1884), and which were brought for killing or injuring persons, or injuring property, at railroad crossings, sixteen were reversed and but one was affirmed, and that one was affirmed by a divided court, after two prior judgments in the same case had been reversed by the Supreme Court. Out of a total of twenty-seven judgments rendered by the Circuit Courts against the same companies, in actions which come before the Supreme Court for review during the same period, and which were brought for injuries resulting in death, twenty-four were reversed and but three affirmed, one of which was the judgment above mentioned, affirmed by a divided court after two prior reversals. Out of a total of sixty-three judgments rendered by the Circuit Courts against the same companies, in cases which involved the question of negligence, and were tried by jury, and which came before the Supreme Court for review during the same period, fifty-three were reversed and but ten affirmed, five of which were affirmed upon the first trials, and the other five upon the second or third trials. On the other hand, out of a total of fifty-three judgments of conviction in criminal cases, reviewed by the Supreme Court during the period covered by the last ten volumes (101-110) of the Illinois Reports, thirty-two were affirmed, and but twenty-one reversed."

This statement is well calculated to set judicious persons to thinking. We think it will be found that the decisions of one or two other States present a similar concurrence of results in favor of railroad companies, and the people may well begin to reflect seriously whether their courts of

last resort, whose judges are put there by the elective system, are not mere putty in the hands of these corporations. It is a question which will bear examining and writing up, and when it is examined and written up, a shirt will be put on the backs of some of the the judges which will stick to them like the shirt of Nessus. It is certain that the decisions of the Supreme Court of the United States in these actions for damages against railroad companies, are more favorable to popular right than are the decisions of some of the State courts of last resort.

The author of the present work gives a chapter on the subject of "Bribery by Railroad Passes." Concerning this chapter he says in his preface: "In expressing his own views upon the subject, the author has endeavored to avoid the use of any language which could be fairly construed as charging the judges of the Supreme Court with wilful wrong-doing. Such a charge would be not only unfounded in fact, but also inconsistent with the friendly feelings entertained towards them by the author. This should be borne in mind in construing as well what is said with reference to their decisions, as the views expressed in the chapter entitled 'Bribery by Railway Passes.' Having himself formerly indulged in the practices there condemned, the author has felt at liberty to discuss the subject with the utmost freedom. It is one of vast importance to judges, and in view of the extraordinary success of railway corporations in the higher courts, it cannot well be regarded as of no concern to the people."

It must not be supposed that this book is a mere tirade against the judges of a particular court. It seems to be a deliberate examination, embraced in some 600 pages, of the decisions of the Supreme Court in Illinois in actions for damages against railroad companies, by one who, we understand, has had experience as a *nisi prius* judge in that State. It contains a vast amount of valuable information for the practitioner on the subjects of the Illinois doctrine of comparative negligence; the burden of proof in these actions; questions of law and fact; excessive damages; trial by jury; instructing the jury, in which the author gives a number of valuable rules and illustrations; and the appellate courts. In all of these chapters the pages teem with practical expositions of the law and with hints and suggestions evidently drawn from the experience of one who is no novice in such litigation. The final chapter in called "Remedies." In this chapter the learned author suggests a number of remedies for the evils of judicial administration, which he claims to have pointed out. The first is, the abolishment of the free pass system. It is a great shame that legislation should be found necessary to prevent judges from taking such gratuities. But it *is* necessary, and we are ashamed to say that there is reason to think that where it exists, it is ineffectual. We have a constitutional ordinance against it in Missouri which has been in existence for nearly ten years, and yet, down to the present time, it has not been possible to get an act of the legislature passed enforcing it. The legislators are themselves corrupted by the railway pass, and a bill of this kind was either defeated or smothered in the Missouri legislature last winter. It is known that many of the most upright judges have been in the habit of travelling on annual, or other passes furnished them by railroad companies. At one time the practice had became so common and had so far escaped public criticism, that the most honorable judges took these gratuities without any thought that in doing so they were doing wrong. And yet when they took them, they were taking bribes from litigants in their courts. They were given as bribes, and with no other motive. If presents of the same value were accepted by a judge from the railroad damage lawyer, no one would debate about calling them bribes. It passes comprehension how an honest judge can carry these tokens of venality in his pockets and yet sit in judgment upon the controversies of the givers of them. Blind Belisarius begging his bread in the streets of Rome was a more worthy spectacle.

Another remedy suggested by the author is the amendment of the law respecting the mode of instructing juries; and under this head he advises, and with much propriety, we think, an abandonment of the practice of submitting written instructions to the jury and a return to the practice of instructing juries orally, as at common law. He also advocates the passage of a statute providing that "no judgment shall be reversed for errors in the charge, if the charge, when considered as whole, states the law applicable to the case with substantial accuracy, nor unless it appears probable to the Appellate or Supreme Court that the jury were misled thereby." Nothing is more ridiculous than the refinements and attenuated discussions upon the propriety of giving and refusing certain instructions, which are constantly met with in our judicial reports. When instructions are given to the jury in writing, there is reason to believe that in nine cases out of ten, they pay no more attention to them than if the judge had thrown them into the waste basket. In fact, they are not, in many cases, capable of understanding them, and the most trained lawyer is not. The system of jury trial, with hypothetical instructions given in writing, is the rankest farce in in judicial administration. In nearly every case which goes to the jury, they decide in favor of plaintiff and against the corporation, and the only question which they fairly consider is the amount of damages. It is believed that in Illinois where causes of this kind are more freely submitted to the jury than in Missouri, the railroad company does not get a verdict in one case out of a hundred. In Missouri, where the judges non-suit more freely, it rarely ever happens that the railroad company gets a verdict in a damage case. We do not know of a single instance. These facts will have to be carefully considered before the judges of the courts of last resort are loosely arraigned for reversing judgments rendered against railway companies in damage suits.

JETSAM AND FLOTSAM.

The *American Law Journal* has suspended. It takes a good deal of money now to found a law journal. There are too many poor law journals in the country and not enough good ones. Some of the poor ones ought to consolidate—and then suspend.

THE EVILS OF DRINKING.—The Swiss Federal Council recently instituted an inquiry as to the means to be employed for diminishing the consumption o spirits, in the course of which it was shown that the population of Switzerland, numbering 2,500,000 drink 27,000,000 litres of brandy yearly, the result being that every year the number of men unfit for military service increases; that 44 per cent of lunatics have lost their reason by the abuse of spirits; that of every 100 criminals 45 are given to drink; that a minimum of 254 deaths per annum are caused by alcohol; and that the great majority of the suicides—600 a year—are attributed to the same vice. St. Louis *Globe Democrat*.